Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. ———

In The

Supreme Court of the United States

STEVEN YAFFE,

Petitioner,

v.

THE SMITH BARNEY DIVISION OF CITIGROUP GLOBAL MARKETS, INC. (erroneously sued as Citigroup Global Markets, Inc.),

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Different Federal District Courts of Appeal have ruled differently since the United States Supreme Court decision in *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995). Subsequent to *Mastrobuono* the Fifth Circuit Court of Appeals ruled that Texas' General Arbitration Act ("TGAA") is consistent with the United States Supreme Court's decision in *Volt Information Sciences, Inc. v. Board of Trustees of the Leland Stanford University,* 489 U.S. 468 (1989) whereas the Ninth Circuit Court of Appeals determined that *Mastrobuono* overturned *Volt* and that the Federal Arbitration Act supersedes California's Arbitration Act.

The question presented here is whether when parties to a written agreement to arbitrate their claims and agree to be governed by California's Arbitration Act (CCP §1280 et seq.) does the Federal Arbitration Act supersede the parties' agreement, and California's Arbitration Act (CCP §1280 et seq.).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Steven Yaffe, respectfully petitions for a writ of certiorari of the decision of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals, which was unpublished, is reproduced in the Appendix at App. 1a. The opinion of the District Court is reproduced in the Appendix at App. 4a.

JURISDICTION

The Court of Appeals' judgment was entered on April 13, 2006. The Petitioner requested an extension to file this writ. Justice Kennedy extended the time to file until August 11, 2006 in a letter dated June 28, 2006. (Copy attached in the Appendix.)

STATUTORY PROVISION INVOLVED

The Federal Arbitration Act 9 U.S.C. §1 et seq.

STATEMENT

The Petitioner, Steven Yaffe, and the Respondent, Smith Barney, signed their "Agreement Regarding Arbitration" on or about July 18, 2003. (Copy attached in the Appendix.) The "Agreement" required the Petitioner to

consolidate various cases the Petitioner had before the NASD Inc., (formerly known as the National Association of Securities Dealers, Inc.). The parties' "Agreement" both explicitly and implicitly agreed to be bound by California's Arbitration Act (CCP §1280 et seq.)

Arbitration took place on or about June 16, 2004. The Arbitrator issued an award on July 20, 2004 denying that Petitioner was wrongfully terminated under the theory that Petitioner had an implied-in-fact contract of employment to be terminated for "just cause."

The Arbitrator was advised that he did not make an award on all the issues that the parties had consolidated in their "Agreement Regarding Arbitration." The Arbitrator issued a Supplemental Award on July 30, 2004.

However, once again the Arbitrator did not decide all the issues that were before him, and that were a part of the parties' "Agreement Regarding Arbitration." The most significant issue that the Arbitrator failed to decide was that the Petitioner had an Express, Written Contract of Employment, which was the grounds given to the Petitioner for his termination. The Express, Written Contract of Employment was the centerpiece for the Petitioner's allegation that his termination was wrongful and a breach of contract.

REASONS FOR GRANTING PETITIONER'S WRIT OF CERTIORARI

Petitioner signed the "Agreement Regarding Arbitration" so that ***all*** Petitioners' claims could be heard at one time. It was the Respondent who drafted the "Agreement"

and included the language that the parties would be bound by California's Arbitration Act and its various provisions.

California's Code of Civil Procedure §1283.4, which is a part of California's Arbitration Act (CCP §1280 et seq.), reads in its entirety as follows:

> The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of ***all*** the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy.

(Emphasis added)

The California courts have determined that if all the controversies were not decided then the **entire** arbitration has to be repeated, and not just the controversies that were left undecided. In *M. B. Zaninovich, Inc. v. Teamsters Farmwork Local 946,* 86 Cal. App. 3d 410 (1978) the court wrote:

> If this were a new question we would have no hesitancy in remanding the matter for a rehearing, modification and correction of that part of the award which is defective. However, the question is not new and it appears that precedent is solidly against such a procedure, the statutory power of the superior court being harshly constricted in this regard. . . . *Muldrow v. Norris,* 12 Cal. 331 (1859) is still controlling. *Muldrow* held that if arbitrators do not decide all the questions submitted to them the ***entire award is void***.

(Emphasis added)

The United States Supreme Court wrote in *Volt Information Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior University,* 489 U.S. 468 (1989):

> Unlike its federal counterpart, the California Arbitration Act, Cal. Civ. Proc. Code Ann. §1280 et seq. (West 1982), contains a provision to stay arbitration pending resolution of related litigation. We hold that the application of the California statute is not pre-empted by the Federal Arbitration Act (FAA or Act) 9 U.S.C. 1 et seq., in a case where the parties agreed their arbitration agreement will be governed by the laws of California.

A few years after *Volt*, the United States Supreme Court dealt with a New York law that did not allow arbitrators to award punitive damages in arbitration cases. The Court struck down the New York law in favor of the Federal Arbitration Act. However, the Court did not seem to strike down its own decision in *Volt.* In *Mastrobuono v. Shearson Lehman Hutton, Inc.,* 514 U.S. 52 (1995) the Court wrote:

> At most the choice-in-law clause introduces an ambiguity into the arbitration agreement that would otherwise allow for punitive damage awards. As we pointed out in *Volt*, when a court interprets such provisions in an agreement covered by the FAA, "due regard must be given to the strong federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration."

In Petitioner's case there was no dispute that arbitration was the forum that would adjudicate the case. California's Code of Civil Procedure 1283.4 deals with what

happens ***after*** arbitration, and in no way discourages the arbitration process or limits the arbitrator's authority.

FEDERAL COURTS OF APPEALS DIFFER ON THE MEANING IN *MASTROBUONO*

In *Wolsey v. Foodmaker, Inc.*, 144 F. 3d 1205 (9th Cir. 1998) the Ninth Circuit Court of Appeals interpreted *Mastrobuono* to mean that the Federal Arbitration Act superseded states arbitration rules including California's, which was approved by the United States Supreme Court in *Volt*. The court in *Wolsey* wrote:

> Thus, in interpreting the Development Agreement, we are bound by *Mastrobuono*, not *Volt*. Because *Mastrobuono* dictates that a general choice-in-law clause does not incorporate state rules that govern arbitration of authority between courts and arbitrators, the district court erred in applying Cal. Civ. Proc. Code Ann. §1281.2(c) to deny Foodmaker's motion to compel.

However, the Fifth District Court of Appeals came to the opposite conclusion from the Ninth Circuit's decision in *Wolsey*. In *ASW Allstate Painting and Construction Co., Inc. v. Lexington Insurance Company,* 188 F. 3d 307 (5th Cir. 1999) the Fifth Circuit wrote:

> The construction agreement contains a choice-in-law provision stating that Texas law applies to the contract. The Supreme Court held in *Volt* that parties may choose state arbitration rules through a choice-in-law provision. The Federal Arbitration Act ("FAA"), 9 U.S.C. §1 et seq., does not preempt state arbitration rules as long as the

> state rules do not undermine the goals and policies of the FAA. There is a strong presumption in Texas public policy favoring arbitration and upholding the parties' intentions, which is similar to the federal policy of ensuring the enforceability, according to their terms, of private agreements to arbitrate. This court has held that the Texas General Arbitration Act ("TGAA") can govern the scope of an arbitration agreement without undermining the federal policy underlying the FAA.

For reasons that the Petitioner cannot explain, neither the District Court nor the Ninth Circuit Court of Appeals addressed the issue that under the parties' "Agreement Regarding Arbitration" that California's Arbitration Act (CCP §1280 et seq.) would govern in case of a dispute between the parties, and was central to the Petitioner signing the "Agreement."

Petitioner believes that in applying California's Arbitration Act in general and section 1283.4 of the act in particular pursuant to the parties' "Agreement Regarding Arbitration" that the ***entire*** arbitration should be "void," and a new arbitration should be ordered by this Court. Petitioner's opinion is supported by the California Courts. In *Mount Diablo Medical Center v. Health Net of California, Inc.*, 101 Cal. App. 4th 711 (2002), the court wrote:

> We interpret the authorities on the subject to require the court to look at the language of the contract to determine what portion of the state law the parties intended to incorporate and then if any ambiguity exists, to determine whether the provision in question conflicts with the objectives of the FAA. Under this approach, we conclude

> that the parties intended to incorporate procedural law governing the enforcement of their agreement to arbitrate, and these provisions are not preempted.

The Supreme Court wrote in *Volt*:

> By permitting the courts to "rigorously enforce" such agreements according to their terms, see *Byrd*, supra, at 221, we give effect to the contractual rights and expectations of the parties, without doing violence to the policies behind the FAA.

Petitioner respectfully disagrees with the Ninth Circuit Court of Appeals' interpretation of this Court's meaning in *Mastrobuono*. California's Arbitration Act does not do "violence" to the Federal Arbitration Act, and the parties' "Agreement Regarding Arbitration," which incorporated California's Arbitration Act, should be enforced.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEN YAFFE, Petitioner-Appellant, v. THE SMITH BARNEY DIVISION OF CITIGROUP GLOBAL MARKETS, INC., Erroneously sued as Citigroup Global Markets, Inc., Respondent-Appellee.	**No. 05-55365.** **D.C. No. CV-03-04731-PA** **MEMORANDUM*** (Filed Apr. 13, 2006)

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding.

Submitted January 17, 2006**

Before: SKOPIL, FARRIS, and FERGUSON, Circuit Judges.

Steven Yaffe appeals pro se the district court's refusal to vacate an arbitration award. We conclude the arbitrator's decision was not made in "manifest disregard for the law" and, accordingly, we affirm.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

DISCUSSION

Yaffe sought arbitration after he was discharged from his job at the Smith Barney Division of the Citigroup Global Markets, Inc. ("Smith Barney") for allegedly engaging in unauthorized trading, failing to follow instructions, and misrepresenting facts to his supervisor. The arbitrator ruled against Yaffe, concluding "the evidence was sufficient to support a reasonable conclusion that Mr. Yaffe did commit the offending acts." Yaffe moved to vacate the decision, contending the arbitrator failed to address all of his arguments, there was not "good cause" for his termination, Smith Barney failed to investigate and provide him an adequate opportunity to respond to the allegations, and the arbitrator erred by not imposing penalties for Smith Barney's delays in paying Yaffe his earned commissions and returning his investment funds.

We conclude these arguments are beyond the "extremely limited" scope of review of an arbitration award. *See G.C. and K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096, 1105 (9th Cir. 2003). Such an award must be upheld unless "it constitutes a manifest disregard of the law." *Id.* (internal quotation omitted). We have explained that "manifest disregard of the law" means "something more than just an error in the law or a failure on the part of the arbitrators to understand or apply the law. It must be clear from the record that the arbitrators recognized the applicable law and then ignored it." *Carter v. Health Net of California, Inc.*, 374 F.3d 830, 838 (9th Cir. 2004) (internal quotation omitted). Here, Yaffe simply disagrees with the arbitrator's findings and application of law and,

accordingly, does not meet the standard of "manifest disregard." *See id.* (noting "mere allegations of error are insufficient").

AFFIRMED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.: CV 03-4731 PA (JWJx) Date: November 29, 2004
Title: Stephen Yaffe v. The Smith Barney Division of Citigroup Global Markets, Inc.

DOCKET ENTRY

PRESENT:

HONORABLE PERCY ANDERSON,
UNITED STATES DISTRICT JUDGE

C. Kevin Reddick	**Jennifer Cheshire**
Deputy Clerk	**Court Reporter**
Attorney Present for Petitioner:	**Attorney Present for Respondent:**
Stephen Yaffe (pro per)	Trish M. Higgins

PROCEEDINGS: PETITIONER'S MOTION TO VACATE ARBITRATION AWARD

Petitioner Stephen Yaffe ("Yaffe") was employed with Respondent Citigroup Global Markets Inc., a division of which was f/k/a Salomon Smith Barney, Inc. (collectively hereinafter, "Smith Barney"), beginning in April 1990. On September 2000, after Yaffe allegedly committed acts of unauthorized trading, failed to follow a supervisor's instructions and misrepresented facts to a supervisor, Smith Barney terminated Yaffe's employment for cause. Yaffe subsequently filed a complaint for wrongful termination, alleging breach of an implied-in-fact contract of employment, breach of an express written contract of

employment and breach of the implied-in-law covenant of good faith and fair dealing. Yaffe also argued he was owed waiting time penalties pursuant to California Labor Code § 203.

Pursuant to the parties' contractual agreement to arbitrate, Yaffe's claims were submitted to arbitration before the Honorable John Zebrowski ("Arbitrator"), a retired Justice of the California Court of Appeal. The Arbitrator found in favor of Smith Barney on all claims. On July 20, 2004, applying the standard for good cause termination set forth in *Cotran v. Rollings Hudig Hall International,* 17 Cal. 4th 93 (1998),[1] the Arbitrator found that Smith Barney had reached a reasoned conclusion that the offending acts did occur and that the conclusion was supported by substantial evidence gathered during an investigation that was adequate and included notice of the claimed misconduct.

The Arbitrator, however, criticized Smith Barney for failing to give Yafee an adequate opportunity to respond to the allegations made against him. To address this shortcoming, the Arbitrator reviewed Yaffe's explanation for the events leading to his discharge: the account holder never complained about unauthorized trades and Yaffe did not hear what his supervisor had told him. The Arbitrator found that, even if given a chance to proffer these explanations, Yaffe

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[1] *Cotran* stands for the proposition that, in a suit for wrongful termination, "good cause" is not dependent on whether the alleged offending conduct actually occurred "but whether at the time the decision to terminate his employment was made, defendants, acting in good faith and following an investigation that was appropriate under the circumstances, had reasonable grounds for believing plaintiff" committed the offending acts in question. 17 Cal. 4th at 109.

would have still been terminated. That is, the error was harmless, as the decision to terminate Yaffe was not affected by the lack of opportunity to respond. Arbitration Award ¶ 16.

By letter dated July 23, 2004, Yaffe objected to the Arbitrator's failure to determine waiting time penalties allegedly due pursuant to California Labor Code § 203 on commissions paid to Yaffe after his termination. Yaffe also sought waiting time penalties on the refund of his Capital Accumulation Plan on the theory that these payments constituted deferred compensation. In response, on July 30, 2004, the Arbitrator issued the Supplemental Arbitration Award ("Supplemental Award"), finding that final commissions paid to Yaffe were not delayed so as to trigger waiting time penalties under the Labor Code and that waiting time penalties did not apply to refunds to an investment plan such as the Capital Accumulation Plan.

Yaffe now brings this Motion to Vacate the Arbitration Award and Supplemental Award, arguing the Arbitrator failed to consider all claims and acted in "manifest disregard of the law" in deciding the claims he did consider.

Federal policy, evidenced by the FAA, favors arbitration and courts are required to "rigorously enforce agreements to arbitrate." *Shearson/American Express. Inc. v. McMahon,* 482 U.S. 220, 226 (1983). As a result, "federal court review of arbitration awards is extremely limited." *A.G. Edwards & Sons Inc. v. McCullough*, 967 F.2d 1401, 1403 (9th Cir. 1992). Indeed, "[w]here the parties have agreed to arbitration, the court will not review the merits of the dispute." *Thompson v. Tega-Rand Intern.*, 740 F.2d 762, 763 (9th Cir. 1984). "It is generally held that an arbitration award will not be set aside unless it evidences

a 'manifest disregard for law.'" *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1060 (9th Cir. 1991) (citations omitted). The FAA itself provides that a federal court may vacate an arbitration award only where: (1) the award was procured by corruption, fraud, or undue means; (2) there was evident partiality or corruption in the arbitrators; (3) the arbitrators were guilty of misbehavior by which the rights of any party have been prejudiced; or (4) the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. 9 U.S.C. § 10. Absent one of the aforementioned conditions, a federal court should not reverse the finding of an arbitration panel "even in the face of erroneous interpretations of the law." *A.G. Edwards & Sons,* 967 F.2d at 1403 (citing *Todd Shipyards,* 943 F.2d at 1060).

Yaffe contends that the Arbitrator only addressed his claim for breach of an implied-in-fact contract of employment and failed to consider his claims for breach of an express written contract of employment and breach of the implied-in-law covenant of good faith and fair dealing. Contrary to Yafee's contentions, the Arbitrator expressly assumed that a contract requiring good cause for termination existed, Award ¶¶ 1, 17, and found that Respondent had good cause for termination such that no breach occurred. Award ¶¶ 5, 9, 16, 19. No written contract requiring any additional findings for termination has been provided to this Court (or, apparently, to the Arbitrator). The Arbitrator thus addressed all claims.

Petitioner also argues that the Arbitrator ruled in manifest disregard of the law. In support of this contention, Petitioner insists that Smith Barney lacked good cause to terminate him and objects to Smith Barney's

failure to give him an opportunity to respond to the causes cited for his termination. As the Arbitrator noted, however, under *Cotran*, a court (or arbitrator) must not determine whether the acts for which the employee was discharged actually occurred but only whether the employer was justified in concluding that the offending acts occurred. The Arbitrator found that Smith Barney's decision to terminate Yaffe for unauthorized trading, failure to follow a supervisor's instructions and misrepresentations was reasonable and that Smith Barney had conducted a adequate investigation to determine that these acts did, in fact, occur. Nothing in the record suggests the Arbitrator acted with manifest disregard of the law in making these findings. Moreover, Yaffe has never denied that the offending acts occurred; only that he had good reason to commit them or that they were harmless (that no one complained about unauthorized trades, for example). The Arbitrator's decision that Smith Barney was justified in terminating Yaffe based on the reasons it cited was not made in manifest disregard of the law.

Yaffe's contention that the Arbitrator erred in not awarding waiting time penalties under California Labor Code § 203 is equally unavailing. Yaffe was terminated on September 25, 2000. Following his termination, Smith Barney calculated all commissions due to him and paid them on October 10, 2000. In the Supplemental Award, the Arbitrator found that "[t]he evidence preponderated that payment on this schedule was in accordance with the normal and established payment cycle (i.e., payment was not unusually delayed)." Supplemental Award at 2. The Arbitrator rejected Yaffe's contention that commissions should have been paid immediately upon termination, finding that Smith Barney reasonably took the time

needed to calculate accurately outstanding commission payments. Payment of commissions less than a month after termination is not per se unreasonable; the Arbitrator's findings were not made in manifest disregard of the law.

Finally, the Arbitrator's finding that the refund of Yaffe's investment into the Capital Accumulation Plan did not constitute payment of wages that would entitle him to waiting time penalties under section 203 is a correct reading of the statute.

Conclusion

The Supreme Court has more than once announced that the Federal Arbitration Act ("FAA") establishes a strong federal policy favoring arbitration. *See e.g., Mastrobuono v. Shearson Lehman Hutton, Inc.,* 514 U.S. 52, 62 (1995). This policy reflects a desire to enforce arbitration agreements into which parties have entered as well as to encourage swift and efficient dispute resolution. *See Dean Witter Reynolds, Inc. v. Byrd,* 470 U.S. 213, 220, 105 S.Ct. 1238 (1987). "Undue judicial intervention would inevitably judicialize the arbitration process, thus defeating the objective of providing an alternative to judicial dispute resolution." *Tempo Shain Corp. v. Bertek Inc.,* 120 F.3d 16, 19 (2d Cir. 1997) (quotation marks omitted). For these reasons, arbitration awards are accorded "great deference." *Id.*

A motion to vacate is not an appeal; federal courts are not supposed to "superintend arbitration proceedings." *See Teamsters, Local Union 657 v. Stanley Structures. Inc.,* 735 F.2d 903, 906 (5th Cir. 1984); *accord Concourse Beauty School Inc. v. Polakov,* 685, F.Supp. 1311, 1318 (S.D.N.Y.

1988) ("The misconduct must amount to a denial of fundamental fairness of the arbitration proceeding in order to warrant vacating the award."). District courts do not hear appeals from decisions of arbitration panels which, by definition, are final and binding.

Yaffe pays lip service to the standard "manifest disregard" in asking this Court to substitute its judgment for that of the Arbitrator. However, the Court's review of an arbitration award is rigidly narrow. Given these restrictions, Yaffe's motion undermines the concept of swift and efficient dispute resolution.

For the reasons stated, Petitioner failed to meet his heavy burden of demonstrating that the Arbitrator found in favor of Smith Barney without considering pertinent claims or in manifest disregard of the law. Smith Barney has shown the award is final and binding on both parties. Therefore, Yaffee's motion to vacate the arbitration finding is denied.

IT IS SO ORDERED.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

June 28, 2006

Mr. Steven Yaffe
4501 Cedros Avenue, #228
Sherman Oaks, CA 91403

Re: Steven Yaffe
v. Smith Barney Division of Citigroup Global Markets, Inc.
Application No. 05A1218

Dear Mr. Yaffe:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on June 28, 2006 extended the time to and including August 11, 2006.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

by /s/ Jeffrey Atkins
Jeffrey Atkins
Case Analyst

AGREEMENT REGARDING ARBITRATION

Claimant Steven Yaffe ("Yaffe") and respondent Salomon Smith Barney, Inc. (now known as Citigroup Global Markets, Inc.) ("SSB") agree as follows:

1. Yaffe currently has four actions pending against SSB and/or its agents before the National Association of Securities Dealers ("NASD"); NASD Claim Numbers 00-05665, 02-04346, 03-01660, 03-033510. The parties agree that those four actions ("the consolidated actions") will be consolidated for one arbitration proceeding.

2. The Honorable John Zebrowski (retired) shall arbitrate the consolidated actions. In the event that the Honorable John Zebrowski is unable or unwilling to serve as a neutral arbitrator, the Honorable Judith Ryan (retired) shall arbitrate the consolidated actions. The arbitrator will comply with the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration Act, pursuant to California Code of Civil Procedure section 1281.85.

3. The arbitrator shall conduct the arbitration in accordance with the rules and procedures contained in the NASD Code of Arbitration Procedure.

4. The arbitration shall comply with the "5 minimum standards" set forth in *Armendariz v. Foundation Health Psychcare Services, Inc.* 24 Cal.4th 83 (2000).

5. SSB shall pay for all costs "unique to arbitration," including but not limited to the arbitrator's fee, the cost of a room, the cost of a court reporter, and any other costs "unique to arbitration."

6. The arbitration will take place in a neutral location in the West Los Angeles/Santa Monica area of Los Angeles.

7. Yaffe will dismiss his pending actions before the NASD without prejudice. SSB will reimburse Yaffe for any costs "unique to arbitration" that the NASD may charge Yaffe, including arbitrator's fees, room rental, and NASD charges over and above the filing fee.

8. Yaffe will dismiss his motion to compel arbitration currently pending before the United States District Court for the Central District of California, Case No. CV03-4731 PA (JWJx). That action will be stayed pending completion of arbitration.

9. The parties shall make a "best effort" attempt to complete the arbitration by the end of the calendar year 2003.

Execution by Parties

Claimant

Dated: July 16, 2003. By /s/ Steven Yaffe
Steven Yaffe

Respondent Salomon Smith Barney, Inc.

Dated: July 18, 2003. By /s/ Trish Higgins
Trish M. Higgins
Attorney for Respondent
Salomon Smith Barney, Inc.
(now known as Citigroup Global Markets, Inc.)